

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

NATIONAL GRID COMMUNICATIONS, INC.,
Plaintiff

v.

**TOWN OF LENOX and LENOX ZONING
BOARD OF APPEALS,**
Defendants

CIVIL ACTION # 05-CV-30131-MAP

ANSWER

I: PRELIMINARY STATEMENT OF CLAIM

1. Requires no answer, but denied as to the stated reasons why the Plaintiff alleges that the Defendant Zoning Board of Appeals' decision was invalid.

II: JURISDICTION AND VENUE

2. Admitted.
3. Admitted.

III: PARTIES

4. Admitted.
5. Admitted.
6. Admitted in part as the Zoning Board of Appeals is one of the Boards in the Town of Lenox that is authorized to grant Special Permits.

IV: STATEMENT OF FACTS

7. Requires no answer.
8. Requires no answer.
9. Denied in part, admitted in part.
10. Denied in part, admitted in part.
11. Requires no answer.
12. Defendants are without sufficient knowledge to either affirm or deny the allegations contained in Paragraph 12 of the complaint and leave the proof of the same to the Plaintiff.
13. Defendants are without sufficient knowledge to either affirm or deny the allegations contained in Paragraph 13 of the complaint and leave the proof of the same to the Plaintiff.
14. Admitted.
15. Admitted.
16. Admitted.
17. Defendants are without sufficient knowledge to either affirm or deny the allegations contained in Paragraph 17 of the complaint and leave the proof of the same to the Plaintiff.
18. Admitted.

V: STATEMENT OF CLAIMS

Count I (Claim of Prohibition of Wireless Services)

19. Defendants repeat and reallege their answers to Paragraphs 1 through 18 with the

same force and effect as if restated here.

20. Denied in part: Although the Plaintiff's correctly quote a portion of 47 U.S.C. §332 (c) (7), they do not quote the prior section, 47 U.S.C. §332(c) (7) (A), which states, inter alia, that "[e]xcept as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities." The Town of Lenox and the Lenox Zoning Board of Appeals were properly regulating the placement of personal wireless service facilities through their decision, and their action did not "prohibit or have the effect of prohibiting the provision of personal wireless services."

21. Denied.

22. Denied.

Further answering, the Defendants say that the issue of the location of personal wireless service facilities is within the discretion of the Zoning Board of Appeals, and that the said Board acted within its proper discretion in denying the permit sought by the Plaintiff, and that in doing so it did not and does not violate 47 U.S.C. §332 (c) (7) (B) (i) (II).

Count II (Claim of Lack of Substantial Evidence)

23. Defendants repeat and reallege their answers to Paragraphs 1 through 22 with the same force and effect as if restated here.
24. Admitted.
25. Denied.

Further answering, the Defendants say that the records of the Zoning Board of Appeals provide substantial evidence in support of the Board's decision to deny the permit sought by the Plaintiff, and that the said Board acted within its proper discretion in denying the permit sought by the Plaintiff, and that in doing so it did not and does not violate 47 U.S.C. §332 (c) (7) (B) (iii).

Wherefore, the Defendants request that this Court:

- a. Dismiss Plaintiff's Complaint;
- b. Award them costs; and
- c. Award them whatever other relief this Court deems meet and just.

Respectfully submitted,

**The Town of Lenox and the Lenox Zoning
Board of Appeals**

By: 

Jerome J. Scully, Esq, Their Attorney
BBO # 449660
Hannon Lerner
184 Main Street
Lee, MA 01238
(413) 243-3311

Dated: July 8, 2005

CERTIFICATE OF SERVICE

I, Jerome J. Scully, attorney for the Defendants, Town of Lenox and Lenox Zoning Board of Appeals, do hereby certify that a copy of the Answer, was served upon the Plaintiff, by sending the same by first class mail, postage prepaid, addressed to Kenneth Ira Spigle, 687 Highland Avenue, Suite 1, Needham, MA 02494, this 13th day of July, 2005.


Jerome J. Scully